



# A Primer on Pro Bono Family Law Representation

BY TERESA D. LOCKE

*The Access to Justice Series explores the access to justice gap in Colorado, discusses strides that have been made in closing this gap, and encourages innovation in this arena.*

Family law—those two words often cause well-intentioned attorneys in search of pro bono opportunities to turn tail and run. The most common reason attorneys give for declining a request for pro bono representation in a family law case is “I don’t know the first thing about family law.” Such resistance is understandable; taking on a case in an unfamiliar area of the law can be daunting. Nevertheless, there are more parties in need of pro bono representation in domestic relations cases than in any other area of the law.<sup>1</sup>

This article seeks to encourage more attorneys to get involved in family law pro bono representation by equipping them with the basic knowledge and skill set necessary to provide competent representation in family law cases.

First, it provides a primer on the types of family law cases that most often need pro bono legal assistance and gives guidance on the basics of family law. Second, it discusses resources available to assist pro bono attorneys in learning more about family law and in representing pro se family law litigants. Finally, it suggests practical ways for attorneys to offer their services to families in need of pro bono representation.

## Areas of Need

Family law cases can be divided into two broad categories: pre-decree cases and post-decree cases. Pre-decree cases are those where no previous court orders have been issued to resolve the parties’ disputes. Post-decree cases are those where a court has already issued orders, but new

disputes have arisen that require modification or enforcement of a previous order. Within these two categories, there are many subcategories.

## Pre-Decree Cases

The three most common types of pre-decree family law cases are dissolution of marriage or legal separation, allocation of parental responsibilities, and protection orders.

**Dissolution of marriage or legal separation.** There are two ways to unwind a marriage in Colorado: a dissolution of marriage and a legal separation.<sup>2</sup> The procedural aspects of a dissolution and a legal separation are identical. Both actions require the same pleadings, both are initiated in district court, and in both actions, the initiating party is referred to as the petitioner and the other party is referred to as the respondent. In addition, both actions require full financial disclosure by the parties, and both require either:

1. a fully negotiated Separation Agreement (to address all issues related to the division of assets and debts as well as the payment of maintenance, if applicable) and, if there are minor children, a Parenting Plan (to address all issues related to the children, including parenting time, decision-making responsibilities, and child support); or
2. entry of Permanent Orders (a court order resolving all issues) following an evidentiary hearing.

The only practical difference between a dissolution and a legal separation is that following issuance of a Decree of Legal Separation, the parties are still married and therefore are not free to remarry. A Decree of Legal Separation can be converted to a Decree of Dissolution of Marriage at the request of either party, but not for the first 182 days following the initial decree.

## Allocation of parental responsibilities.

An allocation of parental responsibilities (APR) action resolves disputes between non-married parents. An APR action may be initiated as a juvenile court action under the Children’s Code<sup>3</sup> or in district court as a domestic relations case.<sup>4</sup> An APR action can also be brought in district court by a non-parent with standing to seek parental-type rights to a child.<sup>5</sup> A party to a

juvenile case may seek the reimbursement of birthing expenses and child support arrearages,<sup>6</sup> while a party to a domestic APR case cannot. Additionally, juvenile actions do not allow electronic filing, but electronic filing is required in domestic cases.

In an APR action, the court will enter orders allocating parenting time and decision-making responsibilities and will enter a child support order. The allocation of parenting time and the allocation of decision-making responsibilities are both governed by the best interest of the child standard in CRS § 14-10-124. Child support is calculated using the procedures in CRS § 14-10-115.

The court may appoint an independent expert to investigate and make recommendations regarding the allocation of parenting time and decision-making responsibilities. There are two types of independent experts: (1) a child and family investigator (CFI),<sup>7</sup> and (2) a parental responsibilities evaluator (PRE).<sup>8</sup> A CFI may be a trained lawyer or a mental health professional. A CFI's fees are typically shared by the parties and are capped at \$2,750 without prior court approval.<sup>9</sup> State pay is available to cover the CFI's fees in some circumstances.<sup>10</sup> A CFI cannot perform psychological testing, even if the CFI is a mental health professional.<sup>11</sup> Most jurisdictions maintain a list of qualified CFIs who work in their specific judicial district,

which can often be found on the judicial district's website. In contrast, a PRE must be a mental health professional and is authorized to perform psychological testing when necessary. There is no cap for PRE fees, which are also typically shared by the parties, and the fees can often reach \$10,000 or more in a complicated case. State funding is not available for PRE fees.

**Protection orders.** Civil protection orders (CPOs) are sometimes necessary in domestic cases.<sup>12</sup> When no district court action is pending, a request for a CPO is filed in county court. If a dissolution or legal separation case is pending, however, the request must be filed in the existing district court case. Individuals often go to court without representation to receive a temporary civil protection order, which is issued ex parte, and then seek representation for the permanent protection order hearing, which must occur within 14 days of the issuance of the temporary order.<sup>13</sup>

#### **Post-Decree Cases**

The three most common types of post-decree family law cases are modification of child support or maintenance, modification of parenting time or decision-making responsibilities, and enforcement of court orders.

**Modification of child support or maintenance.** Child support may be modified whenever there is a substantial and continuing change of

circumstances that would result in a 10% change in the existing obligation.<sup>14</sup> Child support may not be modified retroactively unless there has been a court-ordered, voluntary, or mutually agreed upon change of physical care of the child. Spousal maintenance is modifiable any time there is a substantial and continuing change of circumstances that makes the original award unfair or unconscionable and may only be awarded from the date of a motion to modify going forward.

**Modification of parenting time or decision-making responsibilities.** Circumstances often change after the entry of Permanent Orders or adoption of a Parenting Plan necessitating modification of parenting time or decision-making responsibilities. To modify parenting time<sup>15</sup> or decision-making responsibilities,<sup>16</sup> the moving party must demonstrate that a modification is necessary to serve the best interests of the child. The court may not restrict a parent's parenting time rights unless it finds that the parenting time would endanger the child's physical health or significantly impair the child's emotional development. Similarly, to modify decision-making responsibilities, the court must find that keeping the existing decision-making arrangement would endanger the child's physical health or significantly impair the child's emotional development. Neither party may file a motion to modify parenting time



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that seeks to change the party with whom the child resides a majority of the time or a motion to modify decision-making authority until the expiration of two years after disposition of any previous motion seeking such a modification. The only exception to this limitation is where the court decides, on the basis of affidavits, that there is reason to believe that a continuation of the prior order may endanger the child's physical health or significantly impair the child's emotional development.

**Enforcement of court orders.** Sometimes a party to a domestic relations case fails to follow the court's orders, and it becomes necessary for the other party ask the court for help in enforcing the orders. Enforcement of monetary orders can be done through garnishment<sup>17</sup> or wage assignments,<sup>18</sup> but enforcement of non-monetary orders generally must be done through contempt proceedings.<sup>19</sup>

### Family Law Resources

It is not necessary to know everything about family law to provide pro bono representation to a pro se litigant. There are many resources readily available to help attorneys navigate the family law field.

### Online Resources and Publications

The Colorado Judicial Branch website<sup>20</sup> contains a wealth of helpful information. Not only does the website house many domestic relations forms (in a fillable format), but it also provides detailed instructions on how to complete and file the forms. Under the "Court Business Resources" tab for each judicial district, the website offers other valuable resources such as lists of CFIs, procedures for seeking protection orders in various districts, information regarding mediators and mandatory parenting classes, and resources for victims of domestic violence. The websites for Metro Volunteer Lawyers (MVL)<sup>21</sup> and Colorado Legal Services<sup>22</sup> also offer many family law forms and links to other helpful resources.

One of the most thorough online resources for all things Colorado family law is the Checkerboard, which was created by Ric Morgan, a family law practitioner in Elbert County.<sup>23</sup> The robust website contains links to forms, copies of

statutes, flowcharts, and information regarding many family law principles and procedures.

Finally, CBA-CLE offers a comprehensive *Colorado Family Law Deskbook*.<sup>24</sup> This resource contains discussion of applicable case law and statutes and provides the practitioner with forms beyond those available through the previously referenced websites.

### Mentorship and Training

Upon request, MVL will pair a new-to-family-law pro bono attorney with a more seasoned family law practitioner in a mentor-type relationship to answer questions and offer encouragement and guidance when needed. MVL also offers several free training programs throughout the year on family law issues.


### Opportunities for Involvement

Perhaps this article has inspired you to get involved in a family law pro bono case and you're wondering where to go from here. At any given time, MVL has more than a dozen family law cases waiting to be paired with a pro bono attorney. As an added benefit, attorneys who take a case through MVL can receive CLE credit for their work.

For those who don't have time to take on a case, MVL has many other opportunities through its clinics that limit time commitment to a few hours. MVL's Family Law Court Program assists clients in Adams, Arapahoe, Denver, Douglas, and Jefferson Counties with uncomplicated,

uncontested divorce or custody matters. MVL's Post-Decree Clinics in Adams, Arapahoe, Denver, and Jefferson Counties assist pro se litigants with filling out forms and determining appropriate next steps in resolving post-decree issues. Contact MVL at (303) 860-1115 to learn the dates of the various clinics and how you can get involved.

### Conclusion

While the need for pro bono representation in family law cases is great, so are the resources available to educate and assist attorneys who are willing to take on a family law case. The next time you are presented with an opportunity to provide pro bono representation in a family law case, don't turn tail and run—step up and say yes. You can and will make a positive difference. 



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### NOTES

1. "Reporting Justice III: A Report on the Pro Bono Work of American Lawyers" (ABA 2013), [www.americanbar.org/content/dam/aba/administrative/probono\\_public\\_service/ls\\_pb\\_Supporting\\_Justice\\_III\\_final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_Supporting_Justice_III_final.authcheckdam.pdf).
2. CRS § 14-10-106.
3. CRS §§ 19-4-101 et seq.
4. CRS § 14-10-123.
5. *Id.*
6. CRS § 19-4-116.
7. CRS § 14-10-116.5.
8. CRS § 14-10-127.
9. CJD 04-08.
10. CRS § 14-10-116.5(3).
11. CJD 04-08.
12. CRS §§ 13-14-101 et seq.
13. CRS § 13-14-104.5.

14. CRS § 14-10-122.

15. CRS § 14-10-129.

16. CRS § 14-10-131.

17. CRS § 14-14-105.

18. CRS § 14-14-111.5.

19. CRCP 107.

20. [www.courts.state.co.us](http://www.courts.state.co.us).

21. [www.denbar.org/Metro-Volunteer-Lawyers/Metro-Volunteer-Lawyers-Programs#section-6](http://www.denbar.org/Metro-Volunteer-Lawyers/Metro-Volunteer-Lawyers-Programs#section-6).

22. [coloradoprobono.com](http://coloradoprobono.com).

23. [www.checkerboard.co](http://www.checkerboard.co).

24. Harris et al., *Colorado Family Law Deskbook with Forms* (CBA-CLE Rev. ed. 2013).